IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 1086 OF 2003

Dr. Vasant Pandurang Shinde,)
B/23/102, Anand Nagar,)
Pandit Jawaharlal Mehru Road)
Santracruz (E), Mumbai-55.) ..... Petitioner.

versus

1. The State of Maharashtra.)
)
2. The Secretary,)
Medical Education & Drugs)
Dept. Mantralaya.)
)
3. The Commissioner,)
Food & Drugs Admn.)
Griha Nirmal Chavan, Bandra)
Mumbai - 400 051.) ... Respondents.

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Shri V.M. Bhate for the petitioner

Shri S.R. Nargolkar AGP for the State- Respondents 1 to 3.

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CORAM ; V.G.PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED; 10TH JANUARY, 2005.

ORAL JUDGMENT; (Per Palshikar, J.)

1. By this petition, the petitioner has challenged the action of the respondents, terminating the services of the petitioner as the same was not satisfactory.

2. During the course of service, the petitioner was communicated certain adverse remarks and ultimately on 5-3-1987 the services of the petitioner was terminated on the ground that the performance of the petitioner was not satisfactory during the period of probation.

3. Writ Petition No.1015 of 1987 was therefore filed by the petitioner, challenging the action of termination in this court. After the establishment of Maharashtra Administrative Tribunal, the petition was transferred to the Tribunal and was re-numbered as Transfer Application No. 186 of 1991. In the year 1990 the petitioner superannuated and on 19-11-1992 the Transfer Application No.186/91 was decided by the Tribunal and the order of termination was set aside with a direction to reconsider the petitioner's representation and decide the matter afresh by a Speaking Order.

4. On 8-6-1993 order passed by the Government of Maharashtra dated 31-5-1993, was received by the petitioner, confirming the earlier order dated 5-3-1987 terminating the services of the petitioner on the ground of unsatisfactory performance. Being aggreived by this order, Original Application No. 632 of 1993 was filed before the Tribunal which came up for hearing on 17-9-1999 before the Division Bench and the members

of the Division Bench deferred on the question as to whether the impugned order was speaking order or not. The matter was therefore referred for adjudication to a third member who was the Chairman.

5. The Chairman heard the parties and concurred the the opinion of the Administrative member that the order impugned was speaking order. In view of the majority opinion therefore, the Original Application was dismissed. This dismissal is challenged by this petitioner, on the ground mentioned in the petition as also verbally canvassed by the learned advocate for the petitioner. The main contention is that the order is not a speaking order. The adverse remarks were passed malafide and arbitrary and therefore there is no basis for termination of the petitioner's service.

6. The fact that the adverse remarks were duly communicated to the petitioner is not in dispute. The remarks having passed by different officers on three different orders and all these aspects were considered by the Government while passing the impugned order, which, on proper appreciation Tribunal has held as speaking order. Reliance was placed on a judgment of the Supreme Court in **V.P.Ahuja Vs. State of Punjab and others reported in (2000)3 S.C.C. 239** in which it is held that a probationer is entitled to certain

protection even though he is a probationer and his services cannot be terminated as punitive without complying with the principles of natural justice. This decision is of no use to the petitioner, since his termination is not in any manner punitive and it is based on the service record of the petitioner wherein three adverse remarks by three different authorities were considered and the remarks were also communicated to the petitioner.

4. This aspect is properly considered by the Administrative Tribunal in its order which is impugned in this petition. The fact that it was also considered by the appellate authority as required by the order of remand and para 8 specifically refers to the adverse remarks and proceeds to find that relying thereon the work is rightly held as unsatisfactory.

6. The question as to whether the cumulative effect of certain remarks duly communicated is enough for coming to the conclusion regarding satisfactory completion of probation is the question of subjective satisfaction and unless it is demonstrated to be perverse no interference is liable to be made by any tribunal. There is therefore no error of jurisdiction committed by the tribunal in passing the impugned order rejecting the original application of the petitioner. We

therefore see no reason to interfere. Hence the petition fails and it is dismissed.

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